

Representative Carol Spackman Moss proposes the following substitute bill:

HOMEOWNER ASSOCIATION PROVISIONS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Condominium Ownership Act and the Community Association Act.

Highlighted Provisions:

This bill:

- defines terms;
- amends the enforcement of a lien during a period of noncompliance with registration requirements;
- amends and consolidates provisions regarding providing statements of unpaid assessments and payoff information;
- creates a statute of repose for certain claims; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **57-8-13.1**, as last amended by Laws of Utah 2013, Chapter 95

27 **57-8-54**, as enacted by Laws of Utah 2011, Chapter 355

28 **57-8a-105**, as last amended by Laws of Utah 2013, Chapter 95

29 **57-8a-217**, as last amended by Laws of Utah 2015, Chapter 325

30 **57-8a-311**, as enacted by Laws of Utah 2011, Chapter 355

31 REPEALS:

32 **57-8-6.3**, as enacted by Laws of Utah 2011, Chapter 255

33 **57-8a-106**, as last amended by Laws of Utah 2012, Chapter 369

34 **57-8a-206**, as enacted by Laws of Utah 2004, Chapter 153

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **57-8-13.1** is amended to read:

38 **57-8-13.1. Registration with Department of Commerce.**

39 (1) As used in this section, "department" means the Department of Commerce created
40 in Section **13-1-2**.

41 (2) (a) No later than 90 days after the recording of a declaration, an association of unit
42 owners shall register with the department in the manner established by the department.

43 (b) An association of unit owners existing under a declaration recorded before May 10,
44 2011, shall~~[no later than July 1, 2011,]~~ register with the department in the manner established
45 by the department.

46 (3) The department shall require an association of unit owners registering as required
47 in this section to provide with each registration:

48 (a) the name and address of the association of unit owners;

49 (b) the name, address, telephone number, and, if applicable, email address of the
50 president of the association of unit owners;

51 (c) the name and address of each management committee member;

52 (d) the name, address, telephone number, and, if the contact person wishes to use email
53 or facsimile transmission for communicating payoff information, the email address or facsimile
54 number, as applicable, of a primary contact person who has association payoff information that
55 a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or
56 sale of the owner's unit; and

(e) a registration fee not to exceed \$37.

(4) An association of unit owners that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) (a) During any period of noncompliance with the registration requirement described in Subsection (2) or the requirement for an updated registration described in Subsection (4)[:], an association of unit owners may not enforce a lien that arose under Section 57-8-44.

~~[(i) a lien may not arise under Section 57-8-44; and]~~

~~[(ii) an association of unit owners may not enforce an existing lien that arose under Section 57-8-44.]~~

(b) A period of noncompliance with the registration requirement of Subsection (2) or with the updated registration requirement of Subsection (4) does not begin until after the expiration of the 90-day period specified in Subsection (2) or (4), respectively.

(c) An association of unit owners that is not in compliance with the registration requirement described in Subsection (2) may end the period of noncompliance by registering with the department in the manner established by the department under Subsection (2).

(d) An association of unit owners that is not in compliance with the updated registration requirement described in Subsection (4) may end the period of noncompliance by submitting to the department an updated registration in the manner established by the department under Subsection (4).

(e) Except as described in Subsection (5)(f), beginning on the date an association of unit owners ends a period of noncompliance[:], the association of unit owners may enforce a lien that arose under Section 57-8-44.

~~[(i) a lien may arise under Section 57-8-44 for any event that:]~~

~~[(A) occurred during the period of noncompliance; and]~~

~~[(B) would have given rise to a lien under Section 57-8-44 had the association of unit owners been in compliance with the registration requirements described in this section; and]~~

~~[(ii) an association of unit owners may enforce a lien described in Subsection (5)(e) or a lien that existed before the period of noncompliance.]~~

(f) If an owner's unit is conveyed to an independent third party during a period of noncompliance described in this Subsection (5):

(i) a lien that arose under Section 57-8-44 before the conveyance of the unit became final is extinguished when the conveyance of the unit becomes final; and

(ii) an event that occurred before the conveyance of the unit became final, and that would have given rise to a lien under Section 57-8-44 had the association of unit owners been in compliance with the registration requirements of this section, may not give rise to a lien under Section 57-8-44 if the conveyance of the unit becomes final before the association of unit owners ends the period of noncompliance.

Section 2. Section 57-8-54 is amended to read:

57-8-54. Statement from manager or management committee of unpaid assessment -- Payoff information from manager or management committee -- Applicability.

(1) (a) A manager or management committee shall issue a written statement indicating any unpaid assessment with respect to a unit owner's unit upon:

~~[(a)]~~ (i) a written request by the unit owner or the unit owner's agent; and

~~[(b)]~~ (ii) payment of a reasonable fee not to exceed \$25.

(b) A manager or management committee shall provide payoff information with respect to a unit owner's unit upon:

(i) a written request that:

(A) is conveyed to the primary contact person designated under Subsection 57-8-13.1(3)(d);

(B) contains the name, telephone number and address of the person making the request and the facsimile number or email address for delivery of the payoff information; and

(C) is accompanied by a written consent for the release of the payoff information identifying the person requesting the information as a person to whom the payoff information may be released and signed and dated by an owner of the unit for which the payoff information is requested; and

(ii) subject to Subsection (3), payment of a reasonable fee not to exceed \$50.

(2) If a unit owner makes a written request as described in Subsection (1) and the association of unit owners has referred the unit owner's delinquent account to a third party for collection, the association of unit owners may:

(a) in the association's response to the request, include the amount of fees and costs

119 from the unit owner's delinquent account that the association referred to the third party; or

120 (b) require that the unit owner obtain the amount of fees and costs that the association
121 referred to the third party directly from the third party.

122 (3) If a closing agent makes a written request for payoff information in accordance with
123 Subsection (1)(b) in connection with the closing of a unit owner's financing, refinancing, or
124 sale of the unit owner's unit:

125 (a) the association of unit owners may not require the fee described in Subsection
126 (1)(b)(ii) to be paid before providing the payoff information; and

127 (b) if the association of unit owners fails to provide the payoff information within 10
128 business days after the closing agent requests the information, the association may not enforce
129 a lien against that unit for money due to the association at that closing until the association
130 provides the information.

131 ~~[(2)]~~ (4) A written statement under Subsection (1) is conclusive in favor of a person
132 who reasonably relies on the written statement in good faith.

133 (5) This section applies to each association of unit owners, regardless of when the
134 association of unit owners is formed.

135 Section 3. Section **57-8a-105** is amended to read:

136 **57-8a-105. Registration with Department of Commerce.**

137 (1) As used in this section, "department" means the Department of Commerce created
138 in Section [13-1-2](#).

139 (2) (a) No later than 90 days after the recording of a declaration of covenants,
140 conditions, and restrictions establishing an association, the association shall register with the
141 department in the manner established by the department.

142 (b) An association existing under a declaration of covenants, conditions, and
143 restrictions recorded before May 10, 2011, shall~~[-no later than July 1, 2011,]~~ register with the
144 department in the manner established by the department.

145 (3) The department shall require an association registering as required in this section to
146 provide with each registration:

147 (a) the name and address of the association;

148 (b) the name, address, telephone number, and, if applicable, email address of the chair
149 of the association board;

(c) contact information for the manager;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and

(e) a registration fee not to exceed \$37.

(4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) (a) During any period of noncompliance with the registration requirement described in Subsection (2) or the requirement for an updated registration described in Subsection (4)[:],
an association may not enforce a lien that arose under Section 57-8a-301.

~~[(i) a lien may not arise under Section 57-8a-301; and]~~

~~[(ii) an association may not enforce an existing lien that arose under Section 57-8a-301.]~~

(b) A period of noncompliance with the registration requirement of Subsection (2) or with the updated registration requirement of Subsection (4) does not begin until after the expiration of the 90-day period specified in Subsection (2) or (4), respectively.

(c) An association that is not in compliance with the registration requirement described in Subsection (2) may end the period of noncompliance by registering with the department in the manner established by the department under Subsection (2).

(d) An association that is not in compliance with the updated registration requirement described in Subsection (4) may end the period of noncompliance by submitting to the department an updated registration in the manner established by the department under Subsection (4).

(e) Except as described in Subsection (5)(f), beginning on the date an association ends a period of noncompliance[:], the association may enforce a lien that arose under Section 57-8a-301.

~~[(i) a lien may arise under Section 57-8a-301 for any event that:]~~

~~[(A) occurred during the period of noncompliance; and]~~

181 ~~[(B) would have given rise to a lien under Section 57-8a-301 had the association been~~
182 ~~in compliance with the registration requirements described in this section; and]~~

183 ~~[(ii) an association may enforce a lien described in Subsection (5)(c) or a lien that~~
184 ~~existed before the period of noncompliance.]~~

185 (f) If an owner's residential lot is conveyed to an independent third party during a
186 period of noncompliance described in this Subsection (5):

187 (i) a lien that arose under Section 57-8a-301 before the conveyance of the residential
188 lot became final is extinguished when the conveyance of the residential lot becomes final; and

189 (ii) an event that occurred before the conveyance of the residential lot became final,
190 and that would have given rise to a lien under Section 57-8a-301 had the association been in
191 compliance with the registration requirements of this section, may not give rise to a lien under
192 Section 57-8a-301 if the conveyance of the residential lot becomes final before the association
193 ends the period of noncompliance.

194 Section 4. Section 57-8a-217 is amended to read:

195 **57-8a-217. Association rules -- Requirements and limitations relating to board's**
196 **action on rules -- Vote of disapproval -- Statute of repose.**

197 (1) As used in this section:

198 (a) "Rule" means an association's policy, guideline, restriction, procedure, or regulation
199 that:

200 (i) is not in the association's articles of incorporation or other similar entity-formation
201 document, declaration, bylaw, or plat; and

202 (ii) governs the conduct of persons or the use, quality, type, design, or appearance of
203 real or personal property.

204 (b) "Rule" does not include the board's internal business operating procedures.

205 ~~[(+)]~~ (2) (a) Subject to Subsection ~~[(+)]~~ (2)(b), a board may adopt, amend, modify,
206 cancel, limit, create exceptions to, or expand~~[-, or enforce]~~ the rules ~~[and design criteria]~~ of the
207 association.

208 (b) A board's action under Subsection ~~[(+)]~~ (2)(a) is subject to:

209 (i) this section;

210 (ii) any limitation that the declaration imposes on the authority stated in Subsection
211 ~~[(+)]~~ (2)(a);

212 (iii) the limitation on rules in Sections 57-8a-218 and 57-8a-219;
213 (iv) the board's duty to exercise business judgment on behalf of:
214 (A) the association; and
215 (B) the lot owners in the association; and
216 (v) the right of the lot owners or declarant to disapprove the action under Subsection
217 ~~[(4)]~~ (5).

218 ~~[(2)]~~ (3) Except as provided in Subsection ~~[(3)]~~ (4), before adopting, amending,
219 modifying, canceling, limiting, creating exceptions to, or expanding the rules ~~[and design~~
220 ~~criteria]~~ of the association, the board shall:

221 (a) at least 15 days before the day on which the board ~~[will meet]~~ meets to consider a
222 change to a rule ~~[or design criterion]~~, deliver notice to lot owners, as provided in Section
223 57-8a-214, that the board is considering a change to a rule ~~[or design criterion]~~;

224 (b) provide an open forum at the board meeting giving lot owners an opportunity to be
225 heard at the board meeting before the board takes action under Subsection ~~[(1)]~~ (2)(a); and

226 (c) deliver a copy of the change in the rules ~~[or design criteria]~~ approved by the board
227 to the lot owners as provided in Section 57-8a-214 within 15 days after the ~~[date of the board~~
228 ~~meeting]~~ day on which the board meets.

229 ~~[(3)]~~ (4) (a) Subject to Subsection ~~[(3)]~~ (4)(b), a board may adopt a rule without first
230 giving notice to the lot owners under Subsection ~~[(2)]~~ (3) if there is an imminent risk of harm
231 to a common area, a limited common area, a lot owner, an occupant of a lot, a lot, or a
232 dwelling.

233 (b) The board shall provide notice under Subsection ~~[(2)]~~ (3) to the lot owners of a rule
234 adopted under Subsection ~~[(3)]~~ (4)(a).

235 ~~[(4)]~~ (5) A board action in accordance with Subsections ~~[(1)]~~ (2), ~~[(2)]~~ (3), and ~~[(3)]~~ (4)
236 is disapproved if within 60 days after the ~~[date]~~ day of the board meeting where the action was
237 taken:

238 (a) (i) there is a vote of disapproval by at least 51% of all the allocated voting interests
239 of the lot owners in the association; and

240 (ii) the vote is taken at a special meeting called for that purpose by the lot owners
241 under the declaration, articles, or bylaws; or

242 (b) (i) the declarant delivers to the board a writing of disapproval; and

(ii) (A) the declarant is within the period of administrative control; or
(B) for an expandable project, the declarant has the right to add real estate to the project.

~~[(5)]~~ (6) (a) The board has no obligation to call a meeting of the lot owners to consider disapproval, unless lot owners submit a petition, in the same manner as the declaration, articles, or bylaws provide for a special meeting, for the meeting to be held.

(b) Upon the board receiving a petition under Subsection ~~[(5)]~~ (6)(a), the effect of the board's action is:

- (i) stayed until after the meeting is held; and
- (ii) subject to the outcome of the meeting.

~~[(6)]~~ (7) During the period of administrative control, a declarant may exempt the declarant from association rules and the rulemaking procedure under this section if the declaration reserves to the declarant the right to exempt the declarant.

(8) A person may not commence an action against an association or a member of the association's board for failing to comply with Subsection (3) more than 18 months after the day on which the meeting in which the board action described in Subsection (3) occurs.

Section 5. Section **57-8a-311** is amended to read:

57-8a-311. Statement from association's manager or board of unpaid assessment -- Payoff information from association's manager or board -- Applicability.

(1) (a) An association's manager or board shall issue a written statement indicating any unpaid assessment with respect to a lot owner's lot upon:

~~[(a)]~~ (i) a written request by the lot owner or the lot owner's agent; and

~~[(b)]~~ (ii) payment of a reasonable fee not to exceed \$25.

(b) An association's manager or board shall provide payoff information with respect to a lot owner's lot upon:

(i) a written request that:

(A) is conveyed to the primary contact person designated under Subsection 57-8a-105(3)(d);

(B) contains the name, telephone number, and address of the person making the request and the facsimile number or email address for delivery of the payoff information; and

(C) is accompanied by a written consent for the release of the payoff information

identifying the person requesting the information as a person to whom the payoff information may be released and signed and dated by an owner of the lot for which the payoff information is requested; and

(ii) subject to Subsection (3), payment of a reasonable fee not to exceed \$50.

(2) If a lot owner makes a written request as described in Subsection (1) and the association has referred the lot owner's delinquent account to a third party for collection, the association may:

(a) in the association's response to the request, include the amount of fees and costs from the lot owner's delinquent account that the association referred to the third party; or

(b) require that the lot owner obtain the amount of fees and costs that the association referred to the third party directly from the third party.

(3) If a closing agent makes a written request for payoff information in accordance with Subsection (1)(b) in connection with the closing of a lot owner's financing, refinancing, or sale of the lot owner's lot:

(a) the association may not require the fee described in Subsection (1)(b)(ii) to be paid before providing the payoff information; and

(b) if the association fails to provide the payoff information within 10 business days after the closing agent requests the information, the association may not enforce a lien against that lot for money due to the association at that closing until the association provides the information.

[(2)] (4) A written statement under Subsection (1) is conclusive in favor of a person who reasonably relies on the written statement in good faith.

(5) This section applies to each association, regardless of when the association is formed.

Section 6. Repealer.

This bill repeals:

Section 57-8-6.3, Fee for providing payoff information needed at closing.

Section 57-8a-106, Fee for providing payoff information needed at closing.

Section 57-8a-206, Written statement of unpaid assessment.